1941

File No. Cr. A Rau 141

Legal DEPARTMENT

A BRANCH

Subject:—

P.S

Criminal Appeals

In the High Court Bombay

against the order of

acquittal (Ramara).

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Judgment recorded by the High Court in Criminal Appeal No.146 of 1941 (By the Government of the Province of Bombay) in the case of Imperator versus Laxman Krishna Naik, No.1.

Mr.R.A.Jahagirdar, Government Pleader for the Government of the Province of Bombay.

Mr.S.R.Joshi, Advocate (appointed) for the Accused.

11th August 1941.

(Coram:- Beaumont, C.J. & Sen, J.)

Oral Judgment (Per Beaumont, C.J.) :

This is an appeal by Government against the acquitta of accused No.1 who was charged with offences under Secs. 38(1) and 47(a) and (c) of the Salt Act. The appeal does not relate to the acquittal under section 47(c), but only relates to the acquittal under sections 38(1) and 47(a).

The facts are not in dispute. Accused No.2 hired a cart belonging to accused No.1 to convey contraband salt from Ankola, which is a customs-station within Section 36(b of the Bombay Salt Act of 1890, and the cart was attached by the police within ten miles of Ankola, and the two accused were prosecuted. Accused No.2 was convicted, but we are not concerned with his case ; we are only concerned with the acquittal of accused No.1.

Section 38(1) of the Act provides that no person shall, within the limits described in section 36, transport or possess salt exceeding one maund in weight, except in the cases mentioned. It is not disputed that the salt was here being transported within the limits described in section 36, and that the exceptions do not apply. The

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Section 47 provides.

> "Whoever, in contravention of this Act, or of any rule or order made under this Act, or of any license or permit obtained under this Act, -
>
> "(a) manufactures, removes or transports salt;"

and then sub-section (c) is in these terms :-

> "(c) Except in the exercise of some power or the discharge of some duty conferred or imposed upon him under this Act or any other enactment at the time in force, receives or is in possession of or, without lawful excuse, retains contraband salt, knowing or having reason to believe the same to be contraband salt."

So that, sub-section (c) deals with possession of contraband salt, and makes knowledge or belief that it is -- contraband salt necessary to constitute an offence. But under section 47(a) it is an offence merely to manufacture remove or transport salt, not merely contraband salt. We have to deal here with a case of removal or transportation of salt, and it is irrelevant that it was contraband.

Section 47 uses two words "removes or transports salt", whilst section 38(1) in the operative part uses only the word "transport", but in Exception (a) it excepts salt which is being removed under a permit. I agree with the learned Magistrate that the two words "removal" and "transportation" are used interchangeably. There is no justification for the argument of Government that "removal" refers only to salt removed from the salt-works of Government under Section 28, because the word is used also in section 11 otherwise than in connection with removal from salt-works. The importance of determining the exact sense in which the words "removal"

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and"transportation" are used lies in the fact that "removal" is defined in Section 3(o); and if transportation has the same meaning, the definition must extend to that word also.Sec.3(o) provides :

> " 'possession' or 'removal' of salt or salt-earth by a servant or agent of any person , on that person's account, shall be deemed to be possession or removal thereof by such person."

It is argued by the learned Government Pleader that all that that section does is to impose vicarious liability upon the master or principal without destroying, or in any way affecting, the direct liability of the servant or agent who is actually in possession of, or removes, salt. But, in my opinion, the learned Magistrate was right in holding that the Section goes beyond that. The section does not provide that possession or removal by a servant or agent shall include possession or removal by a master or principal. It says that it shall be deemed to be possession or removal by the master or principal. In my opinion, the effect of that is to provide that where it is proved that the person in possession of or removing salt is a servant or agent, then the possession or removal shall be deemed to be that of the master or princi-pal, to the exclusion of liability of the servant or agent. Here it is not disputed that accused No.1 was a mere servant, and the charge against him of removing or transporting salt in my opinion must fail.

The decision of the learned Magistrate was right,and the appeal fails.

By the Court,
Sd.K.A.Athalye.
Deputy Registrar.